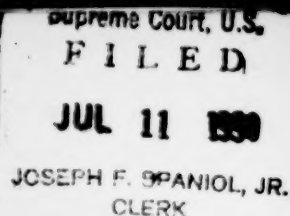


90-128

No.



IN THE  
SUPREME COURT OF THE UNITED STATES

October, 1990 Term

MICHAEL GREB, PAUL METZGER and  
BETTI LOGAN,

Petitioners,

v.

UNIVERSAL PICTURES, INC.,  
CINEPLEX ODEON FILMS, INC.,  
and CINEMA WORLD, INC. AS  
SUCCESSOR TO CINEMATTE  
CORPORATION OF AMERICA AND  
DOING BUSINESS AS KING'S  
COURT THEATRE, INDIVIDUALLY  
and JOINTLY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPERIOR COURT OF  
PENNSYLVANIA  
Pittsburgh District

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July 6, 1990



## QUESTIONS PRESENTED

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1. Was the decision of the Superior Court of Pennsylvania in serious conflict with the applicable decisions of this Court when it decided that the movie "The Last Temptation of Christ" was, per se, entitled to unlimited and absolute protection under the First Amendment without any consideration being given to the contents of the movie.
2. Is the movie subject to the protection of the First and Fourteenth Amendments where the movie represents itself to be "fictional" but in fact the central character is named "Jesus Christ"; where the scenes depicted are those described in the Bible, except that each biblical trait of Jesus Christ portrayed in the Bible is converted

into its diametrically opposite and diabolical trait; where petitioners' God is malevolently misrepresented as a profane, erring and promiscuous individual led by Judas and possessed by Satan; where Christ is shown living in a background filled with sex, lewdness and pornography; where the essential purpose of the movie is to ridicule and burlesque Jesus Christ, to mock His deity and to ridicule, taunt and burlesque His worshippers for worshipping a demented being; where the movie has no ideational communication behind it other than to falsify each important aspect in the life and character of Jesus Christ under the guise of "fiction"; where the movie has produced acts of violence and

mass marches in protest; and where the movie by its taunting provocation incites worshippers to commit breaches of the peace.

3. Where a religious group and the God that they worship and the Bible that they hold sacred is malevolently and fraudulently misrepresented in a movie produced and exhibited by respondents, is the religious group that has been the subject of harassment and attack in the movie entitled to the same protection of injunctive relief because of the unprotected content of the speech that had been accorded by this Court to a racial group similarly harassed and attacked in leaflets distributed to the public on the sidewalks of Chicago?

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PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPERIOR COURT OF  
PENNSYLVANIA  
Pittsburgh District

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Michael Greb, Paul Metzger and Betti  
Logan petition this Court for a writ of

certiorari to the Superior <sup>1</sup> Court of  
Pennsylvania, Pittsburgh District.

OPINIONS BELOW

The opinion of the Court of Common Pleas of Allegheny County, Pennsylvania, filed at Lower Court Docket No. GD88-15402, is unpublished. It is reproduced in Appendix A.

The opinion of the Superior Court of Pennsylvania affirming the Order of the lower court at Superior Court Docket Number 01806PGH88, is by a memorandum opinion which is unpublished. This opinion is reproduced in Appendix B.

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<sup>1</sup> Since the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal, the writ of certiorari is directed to the Superior Court of Pennsylvania which was the last appellate court to consider this case on its merits.

The Supreme Court of Pennsylvania entered an Order denying the Petition for Allowance of Appeal by Order dated April 12, 1990 and no opinion was filed. This Order is reproduced in Appendix C.

#### JURISDICTION

The Order of the Court of Common Pleas granting respondents' Preliminary Objections in the nature of a demurrer was entered on November 30, 1988 and was timely appealed to the Superior Court of Pennsylvania, Pittsburgh District. The Superior Court filed its decision on August 17, 1989 and a Petition for an Allowance of Appeal was timely filed with the Supreme Court of Pennsylvania and an Order denying the Allowance of Appeal was entered April 12, 1990. This petition for certiorari has been filed within ninety days of the date of the Order of the Supreme Court of

Pennsylvania. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257 (a).

CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED

First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend I.

Fourteenth Amendment:

"....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

without due process of law; nor deny  
to any person within its jurisdiction  
the equal protection of the laws."

U.S. Const. amend XIV, §1.

Article 1, §3 Constitution of  
Pennsylvania  
"Religious freedom

— All men have a natural and  
indefeasible right to worship  
Almighty God according to the  
dictates of their own consciences...; no  
human authority can, in any case  
whatever, control or interfere with  
the rights of conscience, and no  
preference shall ever be given by  
law to any religious establishments  
or modes of worship."

Pennsylvania Statute: 1972, Dec. 6. P.L.  
1482, No. 334 §1, 18 P.S. 2709.

"Harassment

A person commits a summary offense when,  
with intent to harass, annoy or alarm  
another person:

(1) he strikes, shoves, kicks or  
otherwise subjects him to physical  
contact, or attempts or threatens to  
do the same; or

(2) he follows a person in or  
about a public place or places; or

(3) he engages in a course of  
conduct or repeatedly commits acts  
which alarm or seriously annoy such  
other person and which serve no  
legitimate purpose."

## STATEMENT OF THE CASE

Petitioners (worshippers of Jesus Christ as God and lay ministers of His word) filed a civil complaint below invoking the equitable powers of the Court to enjoin respondents (producers and exhibitors) from using the name of Jesus Christ in the movie "The Last Temptation of Christ".

Respondents filed Preliminary Objections to the Complaint in the nature of a demurrer averring that the First Amendment granted constitutional protection to the movie. The Court of Common Pleas sustained respondents' Preliminary Objections based on the First Amendment protection and refused to consider in any manner the content of the movie as relevant. The Superior Court affirmed without any further consideration being given to the content of the movie. The Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal.



Petitioners are engaged in the distribution of the Bible and in preaching and witnessing to His word as lay ministers.

Petitioners firmly believe that their sole and only hope to salvation is in Jesus Christ and in His Word as set forth in the Bible. To this Christ and to this Word, petitioners give total reverence and worship. It is by faith in Christ and His Word that petitioners find meaning in this life and it is because of His biblical commands that petitioners feel duty bound to help their fellow man. Petitioners firmly believe that because of these moral precepts and commandments of Christ, governments and society have also benefited by being elevated to enlightened and uplifting levels of social consciousness and human concern.

Respondents are the producers and exhibitors of the movie "The Last Temptation of Christ". In this movie the central character is Jesus Christ. The movie

represents itself in its fleeting prologue to be fictional. However, respondents use the name "Jesus Christ" in lieu of any fictional name and have refused to substitute a fictional name in place of Jesus Christ so as to be accurate and honest in their representation that the movie is indeed fictional.

The producers instead intentionally and malevolently take the name of Jesus Christ and have attributed to Him every fictional misrepresentation that malice could conjure. Respondents have through the technique of the "lie" converted each of Christ's traits into the malevolent opposite trait so that Christ is tranfixed, still under the name of Christ in the movie, into a morally degenerate human being possessed by Lucifer and living in an environment filled with sex, perversion and pornography. By this transfixion

respondents convert the truth of the Bible into a lie.

There is no critical discussion nor analysis of Jesus Christ nor of the Bible in the movie. The movie essentially villifies and burlesques Jesus Christ and taunts and harasses His followers.

Whereas the Bible reveals Christ as forgiving the adulteress, Mary Magdeline, the movie depicts Christ watching Mary Magdeline in a house of prostitution engage in sex acts with a stranger behind a transparent curtain while a group of men are waiting their turn; after Mary Magdeline completes her sexual orgies and indulgences, the movie has Christ coming to her asking her to forgive Him and has Him approaching His mother and asking her also to forgive him for his being a "bad" and an "unfaithful" son; whereas Jesus is revealed in the Bible as being sinless, the movie has Him engaging in one adulterous act after

another; he marries Mary Magdeline who operates a house of prostitution; he later marries Mary the sister of Martha, and while married to Mary He commits adultery with Martha; whereas the Bible reveals Christ at his baptism receiving the Spirit of God as a beloved Son in whom God was well pleased, the movie has Him being baptized with naked women undulating nearby; whereas the Bible reveals that Christ had asked God to forgive those who crucified Him (mankind), the movie has Christ, while in agonizing pain on the cross, engaging in a sex fantasy with Mary Magdeline during His final minutes on this earth; the movie shows Christ making crosses for the Roman government to crucify the Jews and being condemned by Judas as a Jew killer; whereas the Bible reveals Christ as sinless, the movie represents Christ as a "liar", a "saint of blasphemy", a "hypocrite", who is "afraid of everything"; whereas the Bible reveals Christ as the Son of God, the movie depicts one of

the most blasphemous scenes ever conceived by depicting Christ with Lucifer within Him and as one who looks to Judas for guidance; whereas the Bible depicts Christ revealing Himself to be God, the movie has His deity revealed to Christ by Satan; whereas Christ is shown in the Bible as opposed to killing and violence, the movie presents Him as possessing a desire to kill those who sought to stone Mary Magdeline; whereas the Bible shows Judas as betraying Christ in His death, the movie has Christ dependent upon Judas; whereas the Bible reveals that Christ characterized Judas as one who betrayed Him and that it would be better if Judas had never been born; the movie has Christ begging Judas to remain with Him and telling Judas that "what you want, I want" and "we both want the same thing"; whereas the Bible reveals the death of Christ and His resurrection as the mainstay of Christian hope to eternal life, the movie represents the resurrection as a plot manufactured by

St. Paul in order that Paul might find a basis of hope for man in his writings which writings, however, Christ in the movie condemns as totally false and promises that he will expose the hoax to the world.

The above is a cross section of the content of the movie that the lower Courts refused to consider in determining whether the movie was to be protected as free speech under the First and Fourteenth Amendments to the Constitution.

The hearing judge, without a formal hearing or the taking of depositions, sustained the demurrer and dismissed the Complaint. The Court held that the First Amendment\* to the United States Constitu-

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\* Since the restraint was the judicial act of a State Court, it appears that the Fourteenth Amendment and not the First Amendment was applicable. See Shelley v Kramer, 343 U.S. 1 (1948).

tion protected movies, per se, as a form of free speech without considering the content of the movie.

The movie has been exhibited on a limited scope in the United States where it has been met with mass marches, picketing, vandalism and burglary. In Paris, where the movie was shown more extensively, arson and rioting has taken place. The New York Times (dated October 24, 1988) describes the scene thus:

"Paris, Oct. 23 (Reuters) - Ten people were injured in a fire at a Parisian theatre where 'The Last Temptation of Christ' was being shown, the police said today. A police spokesman said the cause of the fire was unknown. It took firefighters an hour to bring the blaze under control. One of the two halls of the theatre was destroyed. A theatre employee told the French radio that moviegoers have been searched since the film opened. 'We were taking penknives and tear gas bombs,' the employee said."

Under Pennsylvania law, petitioners have standing to file their Complaint for injunctive relief. Pennsylvania law

authorizes equitable relief to enjoin a wrongful or criminal act or speech (harassment) for which there is no adequate remedy at law in an instance where the harassing act is repetitious in nature, as in the showing of a movie, and where the speech is not constitutionally protected.\*

Commonwealth v Duncan, 232 Pa. Super. 539, 363 A2d 803 (1967); 18 Pa. Law Encyc., pp. 315, 316, 319. The particular breach or wrong invoked by petitioners (in addition to the common law crime of blasphemy, freedom of worship, obscenity) is the wrong arising out of respondents' violation of the Pennsylvania

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\* In Rice v Elmore, 165 F2d 387 (C.C.A. 4th S.C. 1947), federal court jurisdiction was granted to a negro citizen seeking injunctive relief to restrain defendants from denying plaintiff his right to vote. The Court stated that a jurisdictional ground appeared to be 28 U.S.C.A. § 41(1) to protect rights guaranteed by the Constitution. Petitioners aver in their pleadings violation of both the federal and state constitutions.



Statute entitled "Harassment". Pennsylvania courts have interpreted this statute to apply where the wrongful act involves no legitimate purpose and shows a specific intent to alarm, annoy or harass by conduct that is not constitutionally protected. Commonwealth v Duncan, Supra.

The "Harassment" Statute provides:

"A person commits a summary offense when, with intent to harass, annoy or alarm another person:...(3) he engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose."

(1972, Dec. 6, P.L. 1482, No. 334

§1, effective June 6, 1973) 18 P.S.

§ 2709.

Because of the malevolent falsification of the character of Jesus Christ and of the Bible and the ridicule of His worshippers who are portrayed as worshippers of a demented

god, petitioners have by this harassing speech been denied their free exercise of their religion as guaranteed under the Fourteenth Amendment and interference of their right of conscience as guaranteed under the Pennsylvania Constitution.

The constitutional issue was raised below in the Court of Common Pleas of Allegheny County by respondents' Preliminary Objections in the nature of demurrer and in plaintiffs' Complaint. The lower Court sustained the demurrer based upon the application of the First Amendment. On appeal to the Superior Court, petitioners preserved the Constitutional issue in their questions presented for review. On further appeal to the Supreme Court by way of a Petition for Allowance, the constitutional issue was preserved in the Questions Presented for Review.

REASONS FOR GRANTING THE WRIT OF  
CERTIORARI

I. CERTIORARI SHOULD BE GRANTED IN THIS  
CASE BECAUSE THE DECISION OF THE  
SUPERIOR COURT OF PENNSYLVANIA IN  
REFUSING TO EXAMINE THE CONTENT OF  
SPEECH IN ORDER TO DETERMINE WHETHER  
CONSTITUTIONAL PROTECTION APPLIED  
IS IN SERIOUS CONFLICT WITH THE  
DECISIONS OF THIS COURT.

In a unanimous opinion, this Court  
unequivocally stated in the case of Chaplinsky  
v State of New Hampshire, 315 U.S. 568, 571,  
572 (1942) , that "allowing the broadest scope  
to the language and purpose of the Fourteenth  
Amendment, it is well understood that the  
right of free speech is not absolute at all  
all times and all circumstances. There are  
certain well-defined and narrowly limited  
classes of speech, the prevention and

punishment of which has never been thought to raise any constitutional problems. These include the lewd and obscene, the profane, the libelous and the insulting or 'fighting words-those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interests in order and morality".

Despite the fact that petitioners averred in their Complaint that the movie was lewd, obscene, profane, blasphemous, libelous, malevolently fraudulent and that because of the taunting (fighting) words the movie incited to breaches of the peace, all of which constituted grounds for denial of constitutional protection if proven under the Chaplinsky decision, the lower Court granted

the demurrer without permitting a hearing on the merits of the case as required under the decisions of this Court resulting in the denial of a fair hearing to petitioners and lack of procedural due process.

In Consolidated Edison Co. of New York, Inc. v Public Service Commission of New York, 447 U.S. 529 (1980), this Court said: "For example, when courts are asked to determine whether a species of speech is covered by the First Amendment, they must look to the content of the expression." See Central Hudson Gas & Electric Corp v Public Service Comm'n, 447 U.S. 557, 561-563, 100 S.Ct. 2343, 2349-2350, 65 L.E.d2d 341 (commercial speech); Gertz v Robert Welch, Inc., 418 U.S. 323, 340 94 S. Ct. 2997, 3007, 41 L.E.d.2d 789 (1974) (libel); Miller v California, 413 U.S. 15, 93 S. Ct. 2607, 37 L.Ed.2d 419 (1973) obscenity; Chaplinsky v New Hampshire, 315 U.S. 568, 572-573, 62 S. Ct. 766, 769-770, 86 L.Ed 1031

\* All underlining supplied in the Petition.

(1942) (fighting words)...." (footnote 5, p. 447).

The Superior Court relied on the case of Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952) in support of its holding that movies are fully protected under the First Amendment. This, however, is not the exact holding of the Burstyn case. Justice Clark confined the holding, saying (page 506): "We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that it is 'sacrilegious'.". Justice Clark cautioned against the extension of the language of the Burstyn case in the unlimited manner adopted by the Superior Court of Pennsylvania (pages 502, 503): "To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end of our problem. It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of

every kind at all times and all places. That much is evident from the series of decisions of this Court with respect to other media of communication of ideas.<sup>13</sup> (citing E.G. Feiner v New York, 340 US 315, 95 L ed 295, 71 S Ct 303, 328 (1951); Kovacs v Cooper, 336 US 77, 93 L ed 513, 69 S Ct 448, 10 ALR2d 608 (1949); Chaplinsky v New Hampshire, 315 US 568, 86 L ed 1031, 62 S Ct 766 (1942); Cox v New Hampshire, 312 US 569, 85 L ed 1049, 61 S Ct 762, 133 ALR 1396 (1941)). Nor does it follow that motion pictures are necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems."

In answer to the objection that movies may become "evil" in their content, Justice Clark answered (p.502): "If there be capacity for evil it may be relevant in determining the permissible scope of community control, but it does not authorize substantially unbridled censorship such as we have here."

The Burstyn case is also quite inapplicable to the facts in the instant case. The Burstyn case deals with human personages in a far more restrained manner. In the instant case the central character is God who is maliciously misrepresented by a continuum of fraudulent statements which are totally non-existent in the Burstyn case.



II. CERTIORARI SHOULD BE GRANTED  
BECAUSE THE STATE COURT IN RE-  
FUSING TO CONSIDER THE CONTENT  
OF SPEECH OPENED WIDE THE  
DOOR TO THE ENTRY OF THE  
POISONED PEN (MALICIOUS SPEECH  
WITHOUT IDEATIONAL CONTENT OR  
COMMUNICATIVE VALUE) INTO THE  
MARKET PLACE OF PROTECTED  
SPEECH.

An examination of the movie's contents in this case clearly shows that the biblical narrative was manipulated to intentionally create as gross a distortion of Jesus Christ and of the Bible as one could possibly contrive. Each essential character trait of Christ biblically revealed has been recast into its opposite. Because the technique used is so obvious i.e. attributing to Jesus Christ a trait directly opposite of the Bible it is almost possible to predict the descriptions of

Christ given by respondents in the movie simply by converting the biblically revealed trait into its diabolical opposite.

The entire content of the movie spells malice. The mockery and the burlesque of the Christian is for the sake of mockery and burlesque of the Christian, without any ideational thought or communication other than to taunt and harass the Christian. These harassing acts are prohibitions to the free exercise of religion and interferences with their right of conscience.

Petitioners are fully appreciative of the all important principle that has been followed by this Court in its consideration of any limitation to free speech i.e. that any limitation imposed upon free speech must be restricted to those absolutely necessary boundaries which can be shown to enrich the continued life and vitality of protected free speech.

With this criterion in mind, we submit that to permit mockery and ridicule of one's God and to revile petitioners' religious beliefs for the sake of mockery and burlesque alone would in time wipe out the foundations of free speech itself. Mockery with malice would replace communicative thought and critical ideational analysis; ridicule would transform logic into emotional outbursts inciting to violence, and the very purpose and rationale behind free speech, to-wit, the interplay of competing ideas would cease to exist in a sea of poisonous penmanship. Free speech has as its rationale the improvement and elevation of thought in the market place without circumscribing its area of operation - that there be a full play of competing ideas placed in the open and free marketplace of thought. Malice has no place in such an interplay of ideas. It is an element that requires control by this Court if free speech

is to retain its meaningful purpose and end. To permit free speech to be unlimited simply because it is speech, as was, we submit, erroneously decided by the lower court, is to destroy its freedom. When spite, malice, ridicule, harassment and burlesque of another's religion and another's God is permitted, though disguised under the fraud of fiction, ideas are no longer in movement and values are dethroned. The foundational undergirdings of free speech must be protected by this Court. To permit the Superior Court's decision to stand is to allow a devisive element to enter into society, to accept malice as a proper part of free speech and to assume that the free flow of ideas will continue unhindered by the poisonous elements now being authorized to flow into it.

Petitioners are not seeking to limit critical discussion or exposition of

their religious beliefs nor are they seeking to foster any form of religious doctrine nor are they asking this Court to advance one religious doctrine over another. Petitioners are simply seeking and asking this Court which is acting on behalf of society, to remain neutral by permitting petitioners the freedom to carry on their worship and religious activity without interference. In the *Burstyn* case, Justice Frankfurter referred to those who invoke malice in their references to certain races or religious groups as persons who "sow dissension among races or religious groups" and as "purveyors of racial or religious strife", naming both groups, and as "purveyors of falsehoods". He warned that these purveyors of falsehood "tend powerfully to obstruct the manifold adjustments required for order in a metropolitan polygot community" (page 259).

In refusing to grant certiorari in this case, we respectfully submit that this Court would be abandoning a duty that is owed to all religious groups in better shaping and strengthening the nation's future stability by rejecting the poisonous pen as an acceptable part of free speech. This exclusion would not limit free speech; it would protect its erosion.

Spreading false information in and of itself carries no First Amendment credentials Herbert v. Lando, 441 U.S. 153 (1979). Calculated falsehood falls outside of the fruitful exercise of free speech. Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971). In U.S. v. Rodeo Televisions News Directors Assoc., 395 U.S. 367 (1965) this Court said that "it is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately

prevail...", quoting Philadelphia Newspapers, Inc. v. Heaps, 475 U.S. 767 (1986). Even in the realm of commercial speech, this Court required that in determining whether the commercial expression is protected by the First Amendment "it at least must concern lawful activity and not be misleading". In Gertz v. Robert Welch, Inc., 418 U.S. 323, page 340 (1974) this Court stated in a suit involving newspaper libel, that: "there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open debate' on public issues. New York Times, Co. v. Sullivan, 367 U.S. at 270 they belong to that category of utterances which are no essential part of any exposition of ideas and are of slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social

interest in order and morality, Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942)."

To give malice in free speech constitutional protection is to open wide the door to retributive assault which has already been evidenced in this case. This Court may recall that in 1977 when the movie "Mohammed, Prophet of God" was to be released in Washington, D.C., the worshippers, who protested the showing of the movie, seized three buildings, held 149 hostages, killed one and paralyzed another. The movie was not shown after force was used. If persons injured by the assault of words are not given a legal remedy, resort to force projects its ugly head as an alternative relief as evidenced in the mentioned incident.

Certainly force cannot be the solution to this problem. We submit that a judicial solution or its amelioration is required if further eruptions are not to take place involving sensitive matters such as blasphemy of one's



God and mockery of one's religion and the use of malevolently directed malicious statements within the area of protected free speech.

We are compelled to ask whether the government should be placed under a duty to provide costly protection to protect a group that Justice Frankfurter frankly described as "purveyors of falsehood" in the *Burstyn* case, *Supra*. This question was considered in the case of Carroll v President COM of Princess Ann, 126 Atl. R.2d 452, 247 Md. (1967) where the Court made the following observation:

"Although a state has the duty to provide safeguards for those who wish to publicly air their views, such duty does not extend to provide a protected forum from

which persons may taunt with  
fighting words those who otherwise  
would be law abiding citizens.\*

Nor is there any case that supports the broad standardless test of speech advanced by respondents. In Blossom Dairy Co. v. International Brotherhood, 23 S.E.2d 645, 650, 125 W. Va. 165 (1942) the Court said:

"No case has been found in which any court, state or federal, has held that the communication or dissemination of falsehoods or malicious statements by speech, press, or otherwise is protected by any constitutional guaranty."

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\* Reversed on the unrelated ground that because there was no notice given to the defendants in the ex parte proceeding due process was lacking.

To permit respondents to intentionally and maliciously burlesque petitioners' God, parody the Bible and disseminate falsehoods under the guise of the First Amendment is simply to degrade freedom of speech into permissiveness. Base values become elevated to legally sanctioned protection. Young moviegoers watching the picture will naturally tend to believe what they see on the screen.

The true nature of the movie "The Last Temptation of Christ" is such that it does not form an essential part of any exposition of ideas and is of such that any benefit that may be derived from it is clearly outweighed by the social interests in order and morality.

Respondents could have easily met their social responsibility by simply substituting a fictitious name in place of Jesus Christ and had they done so they would have been consistent with their representation that the movie was truly fictional. But respondents resisted this change, not really, we believe,

because of any dedication to the principles of free speech but we believe their purpose, besides the profit motive, included the desire to sow dissent and the use of malice was the way to sow such a dissent. This intention is evident from the known fact that other producers turned down the screen rights to the book because its content was unacceptable and potentially explosive.

III. THIS CASE REPRESENTS A COLLISION BETWEEN THE FIRST AMENDMENT FREE EXERCISE CLAUSE OF RELIGION AND THE FREEDOM OF SPEECH CLAUSE - A COLLISION WHICH HAS PRODUCED VIOLENCE AND MASS PROTESTS, AND BECAUSE OF THE IMPACT ON SOCIETY, CERTIORARI SHOULD BE GRANTED TO BETTER DEFINE THE AREA OF PROTECTED SPEECH (PARTICULARLY SINCE SIMILAR SPEECH WAS PROTECTED WHEN DIRECTED AGAINST A RACIAL GROUP) IN A SITUATION WHERE ONE'S GOD AND ONE'S RELIGION IS SUBJECTED TO RIDICULE, MOCKERY AND HARASSMENT THROUGH THE MEDIA OF A MOVIE.

In Beauharnais v Illinois, 343 U.S. 250 (1952) defendant was convicted of violating the criminal code which made it a crime to

exhibit in any public place any lithograph, movie picture, etc. which portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens of any race or religion and which exposes the citizens of any race, color, creed or religion to contempt which would be productive of a breach of peace or riots.

Defendant challenged the statute as violating the liberty of speech and press guaranteed under the Fourteenth Amendment. The Court, speaking through Justice Frankfurter, granted certiorari (page 252) "in view of the serious questions raised concerning the limitations imposed by the Fourteenth Amendment on the power of the state to punish utterances promoting friction among racial and religious groups". In this case the lithograph consisted of leaflets containing malevolent statements against the black race. Defendant had passed out bundles of the leaflets to volunteers for distribution

in Downtown Chicago. As in the instant case, there was no face to face confrontation. The distribution of the leaflets like the showing of the movie supplied the confrontation.

The Court held that the speech was not protected under the Fourteenth Amendment stating (page 261) that "there are limits to the exercise of these liberties". Justice Frankfurter described the promoters of such communication as (page 250) "willful purveyors of falsehood concerning racial and religious groups (who) promote strife and tend powerfully to obstruct the manifold adjustments required for free, ordered life in a metropolitan polygot community".

The Beauharnais case is on point and is essentially the present case. The statute had as its purpose the avoidance of harassment of racial or religious groups which would

incite to violence. The Pennsylvania Statute entitled "Harassment" was enacted to accomplish the same end. The lithograph (speech) in Beauharnais case is the movie (speech) in the present case. The malice against the black race in the Beauharnais case is the same type of malice against the religious group in the present case. In addition, plaintiff has standing under Pennsylvania law to injunctive relief to enjoin the harassing act even when it is criminal in nature, in order to avoid a multiplicity of suits and provided that the speech used was not constitutionally protected. Commonwealth v. Duncan, 232 Pa. Super. 539, 363 A.2d 803 (1967), 18 Pennsylvania Law Encyclopedia, pp. 315, 316, 319. In both the Beauharnais case and the instant case the speech used incited to disorderly conduct. The essential difference between the Beauharnais case and the instant



case appears to be that the Beauharnais case involves a racial group and the instant case a religious group. It is a difference without significance since both groups are equally protected. Each group has certain basic rights to dignity that constitutionally cannot be interfered with.

Petitioners averred in their Complaint that the movie was obscene, profane, lewd, fraudulent, blasphemous, taunting (fighting words) that would incite to disorderly conduct and violence. All of these averments required a hearing on the merits. Petitioners were denied a hearing and due process because of the failure of the lower Court to follow the decisions of this Court as set forth in Chaplinsky v New Hampshire, 315 U.S. 568 (1942) and Beauharnais v Illinois, 343 U.S. 250 (1942).

## CONCLUSION

For the foregoing reasons, Petitioners pray that a Writ of Certiorari issue to review the Judgment and Opinion of the Superior Court of Pennsylvania in this case.

Respectfully submitted,

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412-261-2001

July, 1990

## APPENDIX

Opinion of the Court of Common Pleas

Order of the Court of Common Pleas

Opinion of the Superior Court

Order of the Superior Court

Order of the Supreme Court of  
Pennsylvania

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY

MICHAEL GREB, PAUL  
METZGER, and BETTI  
LOGAN

GD88-15402

Plaintiffs,

v.

UNIVERSAL PICTURES, INC.,  
CINEPLEX ODEON FILMS, INC.  
AND CINEMA WORLD, INC. AS  
SUCCESSOR TO CINEMATTE  
CORPORATION OF AMERICA  
AND DOING BUSINESS AS  
KING'S COURT THEATRE  
INDIVIDUALLY AND JOINTLY,

Defendants.

OPINION  
(Filing Date, 11-30-88)

STRASSBURGER, J.

Plaintiffs have filed a  
complaint in equity regarding the  
motion picture "The Last Tempta-  
tion of Christ", seeking the  
following relief in their "WHEREFORE"  
clause:

"...that (a) defendants be  
enjoined from using the name  
of Jesus Christ in said film

in the manner presented:  
(b) that defendants be enjoined from selling or distributing said movie until said changes are made and that all distributed movies be recalled; (c) that defendants be enjoined from using the name of Christ, the disciples, as well as that of John the Baptist and St. Paul, within the present context of the movie; (d) that the title be altered to fit or conform to its fictitious size; and (e) such other relief as this Court may deem fit and proper under the circumstances."

The First Amendment to the Constitution of the United States prohibits this court from granting the relief sought.

STRASSBURGER, J.

November 30, 1988

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY

MICHAEL GREB, PAUL  
METZGER, and BETTI  
LOGAN,

GD88-15402

Plaintiffs,

v.

UNIVERSAL PICTURES,  
et al.,

Defendants.

ORDER OF THE COURT OF COMMON PLEAS  
(Filing Date: 11-16-88)

AND NOW, this 16th day of  
November, 1988, after argument, it is  
hereby ORDERED that the preliminary  
objections in the nature of demurrers  
are sustained and the complaint is  
dismissed as to all defendants.

BY THE COURT:

STRASSBURGER, J.

J. 45030/89

MICHAEL GREB, PAUL METZGER	)	IN	THE
and BETTI LOGAN,	)	SUPERIOR	
	)	COURT OF PA.	
Appellants	)		
	)		
vs.	)		
	)		
UNIVERSAL PICTURES, INC.,	)		
CINEPLEX ODEON FILMS, INC.	)		
AND CINEMA WORLD, INC. AS	)		
SUCCESSOR TO CINEMATTE	)		
CORPORATION OF AMERICAN and	)		
DOING BUSINESS AS KING'S COURT	)		
THEATRE INDIVIDUALLY AND	)		
JOINTLY,	)		
	)	No. 1806	
Appellees	)	Pgh., 1988	

Appeal from the Order of the  
Court of Common Pleas of  
Allegheny County, Civil  
Division at  
No. GD 88-15402.

BEFORE: BROSKY, POPVICH and MONTGOMERY, JJ.

MEMORANDUM:

FILED: 8-17-89

This is an appeal from the order entered  
in the Court of Common Pleas of Allegheny  
County granting the appellees' preliminary

objections. On appeal, the appellants,<sup>1</sup> Michael Greb, Paul Metzger and Betti Logan, contend that the lower court's determination that the First Amendment was applicable in this case was erroneous. We affirm.

Briefly, the facts as stated by the lower court:

On September 8, 1988 the appellants filed a complaint in equity in the Court of Common Pleas seeking a permanent injunction in connection with the exhibition of the movie,

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1 Appellants identify themselves as "individuals who worship Jesus Christ as their Lord and Savior and consider the Bible as the final and authoritative Word of God and that it is only through the death of Jesus Christ as sinless man and faith in him that [appellants are] redeemed and given eternal life." (Appellant's Brief, p. 2)



"The Last Temptation of Christ".<sup>2</sup> The movie group filed preliminary objections in the nature of demurrers. They claimed that the appellants failed to state a casue of action upon which a relief could be granted, and that the appellant's complaint, if granted, would restrain their First Amendment right to freedom of speech.

On October 21, 1988, the appellant filed answers to the preliminary objections and oral argument was heard on November 16, 1988. The lower court granted the appellees' preliminary objections and dismissed the complaint. The lower court's opinion stated that the First Amendment of the Constitution of the United States prohibited the court from granting injunctive relief to the appellants. This timely appeal followed.

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2 The "Last temptation of Christ" is a fictional movie wherein the lives of the historic figure of Jesus Christ, his disciples and other characters of the Bible are recounted.

The individual appellants seek the following relief: "...that (a) defendants be enjoined from using the name of Jesus Christ in said film in the manner presented; (b) that defendants be enjoined from selling or distributing said movie until said changes are made and that all distributed movies be recalled; (c) that defendants be enjoined from using the name of Christ, the disciples, as well as that of John the Baptist and St. Paul, within the present context of the movie; (d) that the title be altered to fit or conform to its fictitious size; and (e) such other relief as this Court may deem fit and proper under the circumstances."

Instantly, the lower court did not err in granting the appellees' preliminary objections. The United States Supreme Court found that "expression by means of motion pictures is included within the free speech and free press guaranty of the First and

Fourteenth Amendments." Joseph Burstyn, Inc.  
v. Wilson, 343 U.S. 495, 72 S. Ct. 777 (1952)  
(New York statute permitting the banning of  
motion picture films on the ground that the  
films are sacrilegious was found to be  
unconstitutional). Mr. Justice Clark delivered  
the opinion of the Court stating:

It is urged that motion pictures do not  
fall within the First Amendment's aegis  
because their production, distribution  
and exhibition is a large-scale business  
conducted for private profit. We cannot  
agree. That books, newspapers, and  
magazines are published and sold for  
profit does not prevent them from  
being a form of expression whose liberty  
is safeguarded by the First Amendment.\*

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\* See Grosjean v. American Press Co.,  
1936, 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed  
660; Thomas V. Collins, 1945, 323 U.S. 516,  
531, 65 S. Ct. 315, 323, 89 L.Ed. 430.

We fail to see why operation for profit should have any different effect in the case of motion pictures...[T]he basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by the Court, make freedom of expression the rule. There is no justification in this case for making an exception to that rule.

Joseph Burstyn, Inc. v. Wilson, supra, at 72 S. Ct. 780, 781, 343 U.S. 501, 502, 503.

Based upon the reasoning above, we find the lower court's order dismissing the appellants' complaint and granting the appellee's preliminary objections was proper.

Order affirmed

J. 45030/89

MICHAEL GREB, PAUL ) IN THE SUPERIOR  
METZGER, and BETTI ) COURT OF PA.

Appellants )

v. )

No. 1806

Pgh., 1988

UNIVERSAL PICTURES, )  
INC., CINEPLEX )  
ODEON FILMS, INC. )  
AND CINEMA WORLD, )  
INC. AS SUCCESSOR )  
TO CINEMATTE )  
CORPORATION OF )  
AMERICA and DOING )  
BUSINESS AS KING'S )  
COURT THEATRE )  
INDIVIDUALLY AND )  
JOINTLY, )

Appelles )

SUPERIOR COURT ORDER  
(Filing Date; 8-17-89)

AND NOW, this 17th day of  
August, 1989, it is ordered as  
follows: Order Affirmed.

BY THE COURT:

Eleanor R. Valecko  
Deputy Prothonotary

IN THE SUPREME COURT OF  
PENNSYLVANIA

MICHAEL GREB, PAUL  
METZGER and BETTI  
LOGAN,

No. 519 W.D.  
Allocatur  
Docket 1989

Petitioners,

v.

UNIVERSAL PICTURES, INC.,  
CINEPLEX ODEON FILMS, INC.  
and CINEMA WORLD, INC.,  
and as successor to  
CINEMETTE CORPORATION OF  
AMERICA, and doing  
business as KING'S COURT  
THEATRE, individually  
and jointly,

Respondents.

ORDER OF THE SUPREME COURT  
OF PENNSYLVANIA

4/12/90: Petition denied.  
Per Curiam

